

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CIVIL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, September 4, 2015.]

In re Abbigail A., S220187. (C074264; 226 Cal.App.4th 1450; Sacramento County Superior Court; JD232871.) Petition for review after the Court of Appeal reversed orders in a dependency proceeding. This case presents the following issue: Do rules 5.482(c) and 5.484(c)(2) of the California Rules of Court conflict with Welfare and Institutions Code section 224.1, subdivision (a), by requiring the juvenile court to apply the provision of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) to a child found by a tribe to be eligible for tribal membership if the child has not yet obtained formal enrollment?

American Civil Liberties Union Foundation of Southern California v. Superior Court, S227106. (B259392; 236 Cal.App.4th 673; Los Angeles County Superior Court; BS143004.) Petition for review after the Court of Appeal denied a petition for writ of mandate. This case presents the following issue: Does information collected by police using “automated license plate readers” — high-speed cameras that automatically scan and record the license plate numbers and time, date and location of every passing vehicle without suspicion of criminal activity — constitute law enforcement “records of . . . investigations” that are permanently exempt from disclosure under the Public Records Act in accordance with Government Code section 6254, subdivision (f)?

Ardon v. City of Los Angeles, S223876. (B252476; 232 Cal.App.4th 175; Los Angeles County Superior Court; BC363959.) Petition for review after the Court of Appeal affirmed an order in a civil action. This case presents the following issues:

- (1) Does inadvertent disclosure of attorney work product and privileged documents in response to a Public Records Act request waive those privileges and protections?
- (2) Should the attorney who received the documents be disqualified because she examined them and refused to return them?

Association of California Ins. Companies v. Jones, S226529. (B248622; 235 Cal.App.4th 1009; Los Angeles County Superior Court; BC463124.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does the Unfair Insurance Practices Act (Ins. Code, § 790, et seq.) give the Insurance Commissioner authority to promulgate a regulation that sets forth requirements for communicating replacement value and states that noncompliance with the regulation constitutes a misleading statement, and therefore an unfair trade practice, for purposes of the act? (2) Does the Insurance Commissioner have the statutory authority to promulgate a regulation specifying that the communication of a replacement cost estimate that omits one or more of the components in subdivisions (a)-(e) of section 2695.183 of title 10 of the California Code of Regulations is a “misleading” statement with respect to the business of insurance? (Cal. Code of Regs., tit. 10, § 2695.183, subd. (j).)

Augustus v. ABM Security Services, Inc., S224853. (B243788; 233 Cal.App.4th 1065; Los Angeles County Superior Court; BC336416, BC345918, CG5444421.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Do Labor Code, § 226.7, and Industrial Welfare Commission wage order No. 4-2001 require that employees be relieved of all duties during rest breaks? (2) Are security guards who remain on call during rest breaks performing work during that time under the analysis of *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833?

B.H. v. County of San Bernardino, S213066. (E054516; nonpublished opinion; San Bernardino County Superior Court; CIVDS913403.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does Penal Code section 11166, subdivision (k), create a mandatory duty requiring a law enforcement agency to cross-report to the relevant social services agency whenever it receives a report of known or suspected child abuse? (2) If so, when is that duty triggered? (3) Does Penal Code section 11166, subdivision (a), apply to law enforcement agencies that receive initial reports of child abuse? (4) If so, what standard should be applied to determine whether a follow-up report is required?

Baltazar v. Forever 21, Inc., S208345. (B237173; 212 Cal.App.4th 221; Los Angeles County Superior Court; VC059254.) Petition for review after the Court of Appeal reversed an order denying a petition to compel arbitration in a civil action. This case presents the following issue: Is an employment arbitration agreement unconscionable for lack of mutuality if it contains a clause providing that either party may seek provisional injunctive relief in the courts and the employer is more likely to seek such relief?

Banning Ranch Conservancy v. City of Newport Beach, S227473. (G049691; 236 Cal.App.4th 1341; Orange County Superior Court; 30-2012-00593557.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Did the City’s approval of the project at issue comport with the directives in its general plan to “coordinate with” and “work with” the California Coastal Commission to identify habitats for preservation, restoration, or development prior to project approval? (2) What standard of review should apply to a city’s interpretation of its general plan? (3) Was the city required to identify environmentally sensitive habitat areas — as defined in the California Coastal Act of 1976 (Pub. Resources Code, § 3000, et seq.) — in the environmental impact report for the project?

Baral v Schnitt, S225090. (B253620; 233 Cal.App.4th 1423; Los Angeles County Superior Court; BC475350.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike in a civil action. This case presents the following issue: Does a special motion to strike under Code of Civil Procedure section 425.16 authorize a trial court to excise allegations of activity protected under the statute when the cause of action also includes meritorious allegations based on activity that is not protected under the statute?

Barry v. State Bar of California, S214058. (B242054; 218 Cal.App.4th 1435; Los Angeles County Superior Court; BC452239.) Petition for review after the Court of Appeal reversed an order awarding attorney fees in a civil action. This case presents the following issue: If the trial court grants a special motion to strike under Code of Civil Procedure section 425.16 on the ground that the plaintiff has no probability of prevailing on the merits because the court lacks subject matter jurisdiction over the underlying dispute, does the court have the authority to award the prevailing party the attorney fees mandated by section 425.16, subdivision (c)?

Bristol-Myers Squibb Co. v. Superior Court, S221038. (A140035; 228 Cal.App.4th 605; San Francisco County Superior Court; JCCP 4748.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case includes the following issues: (1) Did the plaintiffs in this action who are not residents of California establish specific jurisdiction over their claims against the nonresident pharmaceutical drug manufacturer? (2) Does general jurisdiction exist in light of *Daimler AG v. Bauman* (2014) 571 U.S. __ [134 S.Ct. 746, 187 L.Ed.2d 624]?

California Building Industry Assn. v. Bay Area Air Quality Management Dist., S213478. (A135335, A136212; 218 Cal.App.4th 1171; Alameda County Superior Court; RG10548693.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court limited review to the following issue: Under what circumstances, if any, does the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?

California Building Industry Assn. v. State Water Resources Control Bd., S226753. (A137680; 235 Cal.App.4th 1430, mod. 236 Cal.App.4th 529a; San Francisco County Superior Court; CGC11516510.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Does Water Code section 181 permit the State Water Resources Control Board to approve its annual fee under the waste discharge permit program by a majority of the quorum? (2) Does Proposition 26 apply to the waste discharge permit program fee? (3) Does the Board have the initial burden of demonstrating the validity of its fee? (4) Is the fee, which is based on balancing the fees and costs of the waste discharge permit program, an invalid tax unless it separately balances the fees and costs of each of the eight program areas within the program?

Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc., S218497. (B238867; 225 Cal.App.4th 237; Los Angeles County Superior Court; BC449056.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Does the delegation — by a health care service plan (HMO) to an independent physicians association (IPA), under Health and Safety Code section 1371.4, subdivision (e) — of the HMO’s responsibility to reimburse emergency medical service providers for emergency care provided to the HMO’s enrollees relieve the HMO of the ultimate obligation to pay for emergency medical care provided to its enrollees by non-contracting emergency medical service providers, if the IPA becomes insolvent and is unable to pay? (2) Does an HMO have a duty to emergency medical service providers to protect them from financial harm resulting from the insolvency of an IPA which is otherwise financially responsible for the emergency medical care provided to its enrollees?

Center for Biological Diversity v. Department of Fish & Wildlife, S217763. (B245131; 224 Cal.App.4th 1105; Los Angeles County Superior Court; BS131347.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Does the California Endangered Species Act (Fish & Game Code, § 2050 et seq.) supersede other California statutes that prohibit the taking of “fully protected” species, and allow such a taking if it is incidental to a mitigation plan under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)? (2) Does the California Environmental Quality Act restrict judicial review to the claims presented to an agency before the close of the public comment period on a draft environmental impact report? (3) May an agency deviate from the Act’s existing conditions baseline and instead determine the significance of a project’s greenhouse gas emissions by reference to a hypothetical higher “business as usual” baseline?

Central Coast Forest Assn. v. Fish & Game Com., S208181. (C060569; 211 Cal.App.4th 1433; Sacramento County Superior Court; 07CS00851.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court limited review to the following issues: (1) Under the California Endangered Species Act, Fish and Game Code section 2050 et seq., may the Fish and Game Commission consider a petition to delist a species on the ground that the original listing was in error? (2) If so, does the petition at issue here contain sufficient information to warrant the Commission's further consideration?

Citizens for Fair REU Rates v. City of Redding, S224779. (C071906; 233 Cal.App.4th 402, mod. 233 Cal.App.4th 1479a; Shasta County Superior Court; 171377.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Is a payment in lieu of taxes (PILOT) transferred from the city utility to the city general fund a "tax" under Proposition 26 (Cal. Const., art. XIII C, § 1, subd. (1)(e))? (2) Does the exception for "reasonable costs to the local government of providing the service or product" apply to the PILOT (Cal. Const., art. XIII C, § 1, subd. (1)(e)(2))? (3) Does the PILOT predate Proposition 26?

City of Montebello v. Vasquez, S219052. (B245959; 226 Cal.App.4th 1084; Los Angeles County Superior Court; BC488767.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike in a civil action. This case presents the following issue: Did votes by city officials to approve a contract constitute conduct protected under Code of Civil Procedure section 425.16 despite the allegation that they had a financial interest in the contract?

City of Perris v. Stamper, S213468. (E053395; 218 Cal.App.4th 1104; Riverside County Superior Court; RIC524291.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) In this eminent domain case, was the constitutionality of the dedication requirement — that the city claimed it would have required in order to grant the property owner permission to put the property to a higher use — a question that had to be resolved by the jury pursuant to article I, section 19, of the California Constitution? (2) Was the dedication requirement a “project effect” that the eminent domain law required to be ignored in determining just compensation?

City of San Buenaventura v. United Water Conservation Dist., S226036. (B251810; 235 Cal.App.4th 228, mod. 235 Cal.App.4th 956b; Santa Barbara County Superior Court; VENCI00401714, VENCI1414739.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Do the District’s ground water pumping charges violate Proposition 218 or Proposition 26? (2) Does the rate ratio mandated by Water Code section 75594 violate Proposition 218 or Proposition 26?

City of San Jose v. Superior Court, S218066. (H039498; 225 Cal.App.4th 75, mod. 225 Cal.App.4th 568c; Santa Clara County Superior Court; CV150427.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Are written communications pertaining to city business, including email and text messages, which (a) are sent or received by public officials and employees on their private electronic devices using their private accounts, (b) are not stored on city servers, and (c) are not directly accessible by the city, “public records” within the meaning of the California Public Records Act?

Cleveland National Forest Foundation v. San Diego Assn. of Governments, S223603. (D063288; 231 Cal.App.4th 1056, mod. 231 Cal.App.4th 1437a; San Diego County Superior Court; 37-2011-00101593-CU-TT-CTL, 37-2011-00101660-CU-TT-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Must the environmental impact report for a regional transportation plan include an analysis of the plan’s consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05, so as to comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)?

Coker v. JP Morgan Chase Bank, N.A., S213137. (D061720; 218 Cal.App.4th 1; San Diego County Superior Court; 37-2011-00087958-CU-MC-CTL.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Do the anti-deficiency protections in Code of Civil Procedure section 580b apply to a borrower who engages in a “short sale” of real property when the lender approved the sale and reconveyed its deed of trust to facilitate the sale on the condition that the borrower remain liable for any outstanding balance on the loan following the sale? (2) Does a borrower’s request that the creditor release its security interest in real property to facilitate a short sale result in a waiver of the protection of the “security first” rule set forth in Code of Civil Procedure section 726?

Delano Farms Co. v. California Table Grape Com., S226538. (F067956; 235 Cal.App.4th 967; Fresno County Superior Court; 636636-3, 642546, 01CECG01127, 01CECG02289, 01CECG02292, 11CECG00178.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Under Article 1, section 2, subdivision (a), of the California Constitution, can the California Table Grape Commission compel unwilling produce growers to contribute for generic commercial advertising?

Department of Finance v. Commission on State Mandates, S214855. (B237153; 220 Cal.App.4th 740, mod. 221 Cal.App.4th 166d; Los Angeles County Superior Court; BS130730.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: Are the requirements in the National Pollutant Discharge Elimination System (NPDES) permits issued to real parties in interest by the regional water quality control board state mandates subject to reimbursement under article XIII B, section 6, subdivision (b), of the state Constitution?

deSaulles v. Community Hospital of the Monterey Peninsula, S219236. (H038184; 225 Cal.App.4th 1427; Monterey County Superior Court; M85528.) Petition for review after the Court of Appeal reversed an order awarding costs in a civil action. This case presents the following issue: When plaintiff dismissed her action in exchange for the defendant’s payment of a monetary settlement, was she the prevailing party for purposes of an award of costs under Code of Civil Procedure section 1032, subdivision (a)(4), because she was “the party with a net monetary recovery,” or was defendant the prevailing party because it was “a defendant in whose favor a dismissal is entered”?

Dhillon v. John Muir Health, S224472. (A143195; nonpublished opinion; Contra Costa County Superior Court; .) Petition for review after the Court of Appeal dismissed an appeal from an order on a petition for writ of administrative mandate. This case presents the following issue: Is a trial court order granting in part and denying in part a physician’s petition for writ of administrative mandate regarding a hospital’s disciplinary action and remanding the matter to the hospital for further administrative proceedings an appealable order?

DisputeSuite.com, LLC v. Scoreinc.com, S226652. (B248694; 235 Cal.App.4th 1261, mod. 236 Cal.App.4th 529e; Los Angeles County Superior Court; BC489083.) Petition for review after the Court of Appeal affirmed an order denying an award of attorney fees in a civil action. This case presents the following issue: Were defendants entitled to an award of attorney fees under Civil Code section 1717 as the prevailing parties in an action on a contract when they obtained the dismissal of the action on procedural grounds pursuant to a Florida forum selection clause?

Dynamex Operations West, Inc. v. Superior Court, S222732. (B249546; 230 Cal.App.4th 718; Los Angeles County Superior Court; C332016.) Petition for review after the Court of Appeal granted in part and denied in part a petition for peremptory writ of mandate. This case presents the following issue: In a wage and hour class action involving claims that the plaintiffs were misclassified as independent contractors, may a class be certified based on the Industrial Welfare Commission definition of employee as construed in *Martinez v. Combs* (2010) 49 Cal.4th 35, or should the common law test for distinguishing between employees and independent contractors discussed in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 control?

F.P. v. Monier, S216566. (C062329; 222 Cal.App.4th 1087; Sacramento County Superior Court; 06AS00671.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Is a trial court's error in failing to issue a statement of decision upon a timely request reversible per se?

Flethez v. San Bernardino County Employees Retirement Assn., S226779. (D066959; 236 Cal.App.4th 65; San Bernardino County Superior Court; CIVDS1212542.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issue: If a retroactive award of service-connected disability retirement benefits is made in an administrative mandate proceeding, is prejudgment interest under Code of Civil Procedure section 3287 calculated from the day after the employee's last day of regular compensation or the day on which the employee submitted the claim for the benefits?

Flores v. Presbyterian Intercommunity Hospital, S209836. (B235409; 213 Cal.App.4th 1386; Los Angeles County Superior Court; VC058225.) Petition for review after the Court of Appeal reversed an order of dismissal of a civil action. This case presents the following issues: (1) Does the one-year statute of limitations for claims under the Medical Injury Compensation Act (Code Civil Proc., § 340.5) or the two-year statute of limitations for ordinary negligence (Code Civil Proc., § 335.1) govern an action for premises liability against a hospital based on negligent maintenance of hospital equipment? (2) Did the injury in this case arise out of "professional negligence," as that term is used in section 340.5, or ordinary negligence?

Frealy v. Reynolds, S224985. (9th Cir. No. 12-60068; 779 F.3d 1028; Central District of California; BAP No. 11-1433, Bankr. Case No. 09-14039-MJ, Adversary Case No. 09-01205-MJ.) Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: “Does section 15306.5 of the California Probate Code impose an absolute cap of 25 percent on a bankruptcy estate’s access to a beneficiary’s interest in a spendthrift trust that consists entirely of payments from principal, or may the bankruptcy estate reach more than 25 percent under other sections of the Probate Code?”

Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist., S214061. (A135892, A139235; nonpublished opinion; San Mateo County Superior Court; CIV508656.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: When a lead agency performs a subsequent environmental review and prepares a subsequent environmental impact report, a subsequent negative declaration, or an addendum, is the agency’s decision reviewed under a substantial evidence standard of review (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385), or is the agency’s decision subject to a threshold determination whether the modification of the project constitutes a “new project altogether,” as a matter of law (*Save our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288)?

Friends of the Eel River v. North Coast Railroad Authority, S222472. (A139222; 230 Cal.App.4th 85; Marin County Superior Court; CV1103591, CV1103605.) Petition for review after the Court of Appeal affirmed the judgments in actions for writ of administrative mandate. This case includes the following issues: (1) Does the Interstate Commerce Commission Termination Act [ICCTA] (49 U.S.C. § 10101 et seq.) preempt the application of the California Environmental Quality Act [CEQA] (Pub. Res. Code, § 21050 et seq.) to a state agency’s proprietary acts with respect to a state-owned and funded rail line or is CEQA not preempted in such circumstances under the market participant doctrine (see *Town of Atherton v. California High Speed Rail Authority* (2014) 228 Cal.App.4th 314)? (2) Does the ICCTA preempt a state agency’s voluntary commitments to comply with CEQA as a condition of receiving state funds for a state-owned rail line and/or leasing state-owned property?

Gaines v. Fidelity National Title Ins. Co., S215990. (B244961; 222 Cal.App.4th 25; Los Angeles County Superior Court; BC361768.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Was this action properly dismissed for the failure to bring it to trial within five years or should the period during which the action was stayed for purposes of mediation have been excluded under Code of Civil Procedure section 583.340, subdivision (b) or (c)? Did the trial court's April 3, 2008 order "striking the current Trial Date of September 22, 2008" constitute a stay of the "trial of the action" under Code of Civil Procedure, section 583.340, subdivision (b)? What factors distinguish between a stay of trial and a continuance of trial for purposes of Code of Civil Procedure, section 583.340, subdivision (b)?

Gerard v. Orange Coast Memorial Medical Center, S225205. (G048039; 234 Cal.App.4th 285; Orange County Superior Court; 30-2008-00096591.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Is the health care industry meal period waiver provision in section 11(D) of Industrial Wage Commission Order No. 5-2001 invalid under Labor Code section 512, subdivision (a)? (2) Should the decision of the Court of Appeal partially invalidating the Wage Order be applied retroactively?

Gerawan Farming, Inc. v. Agricultural Labor Relations Bd., S227243. (F068526, F068676; 236 Cal.App.4th 1024; Fresno County Superior Court; 13CECG01408.) Petitions for review after the Court of Appeal reversed a decision of the Agricultural Labor Relations Board and denied a petition for peremptory writ of mandate. This case presents the following issues: (1) Does the statutory "Mandatory Mediation and Conciliation" process (Lab. Code, §§ 1164-1164.13) violate the equal protection clauses of the state and federal Constitutions? (2) Do the "Mandatory Mediation and Conciliation" statutes effect an unconstitutional delegation of legislative power? (3) May an employer oppose a certified union's request for referral to the "Mandatory Mediation and Conciliation" process by asserting that the union has "abandoned" the bargaining unit?

The Gillette Co. v. Franchise Tax Bd., S206587. (A130803; 209 Cal.App.4th 938; San Francisco County Superior Court; CGC-10-495911.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Were multistate taxpayers required to apportion business income according to the formula set forth in Revenue and Taxation Code section 25128 as amended in 1993 or could they elect to apportion income according to the formula set forth in former Revenue and Taxation Code section 38006 pursuant to the adoption of the Multistate Tax Compact in 1974?

Gradillas v. Lincoln General Ins. Co., S227632. (9th Cir. No. 13-15638; ___ F.3d ___ [2015 WL 4068840]; Northern District of California; 3:12-cv-03697-CRB.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. As restated by the court, the question presented is: “For purposes of coverage under an automobile insurance policy, what is the proper test for determining whether an injury arises out of the ‘use’ of a vehicle?”

Hamilton v. Yates, S226450. (F069608; nonpublished opinion; Fresno County Superior Court; 10CECG03520.) Petition for review after the Court of Appeal affirmed an order dismissing a civil action. This case presents the following issues: (1) Did the trial court err in concluding that there was no means of affording the indigent prisoner plaintiff in this case access to the courts to pursue his civil action? (2) Did the trial court err by dismissing the action for the plaintiff’s failure to appear in such circumstances?

Hampton v. County of San Diego, S213132. (D061509; 218 Cal.App.4th 286; San Diego County Superior Court; 37-2010-00101299-CU-PA-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does a public entity establish the second element of design immunity under Government Code section 830.6 — discretionary approval of design plans — as a matter of law by presenting evidence that its design plans were approved by an employee with the discretion to do so, even if the plaintiff presents evidence that the design at issue violated the public entity’s own standards?

Haver v. BNSF Railway Co., S219919. (B246527; 226 Cal.App.4th 1104, mod. 226 Cal.App.4th 1376b; Los Angeles County Superior Court; BC435551.) Petition for review after the Court of Appeal affirmed the judgment in a civil action.

Kesner v. Superior Court, S219534. (A136378, A136416; 226 Cal.App.4th 251; Alameda County Superior Court; RG11578906.) Petition for review after the Court of Appeal reversed the judgment in a civil action.

Haver and *Kesner* present the following issue: If an employer’s business involves either the use or the manufacture of asbestos-containing products, does the employer owe a duty of care to members of an employee’s household who could be affected by asbestos brought home on the employee’s clothing?

Horiike v. Coldwell Banker Residential Brokerage Co., S218734. (B246606; 225 Cal.App.4th 427; Los Angeles County Superior Court; SC110477.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: When the buyer and the seller in a residential real estate transaction are each independently represented by a different salesperson from the same brokerage firm, does Civil Code section 2079.13, subdivision (b), make each salesperson the fiduciary to both the buyer and the seller with the duty to provide undivided loyalty, confidentiality and counseling to both?

Howard Jarvis Taxpayers Assn. v. Bowen, S220289. Original proceedings. The court issued an order to show cause directing the parties to show cause why the relief prayed for in the petition for writ of mandate should not be granted. This case involves the validity of proposed Proposition 49 for the November 2014 General Election — specifically, whether the Legislature had the authority to place a non-binding measure on the ballot seeking the views of the electorate.

In re Isiah W., S221263. (B250231; 228 Cal.App.4th 981; Los Angeles County Superior Court; CK91018.) Petition for review after the Court of Appeal affirmed an order terminating parental rights. This case presents the following issue: Does a parent's failure to appeal from a juvenile court order finding that notice under the Indian Child Welfare Act was unnecessary preclude the parent from subsequently challenging that finding more than a year later in the course of appealing an order terminating parental rights?

Jacks v. City of Santa Barbara, S225589. (B253474; 234 Cal.App.4th 925; Santa Barbara County Superior Court; 1383959.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: Is the City of Santa Barbara's 1 percent increase on its electricity bills (i.e., the 1 percent surcharge) a tax subject to Proposition 218's voter approval requirement or a franchise fee that may be imposed by the City without voter consent?

John v. Superior Court, S222726. (B256604; 231 Cal.App.4th 347; Los Angeles County Superior Court; BV030258.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Must a defendant who has been declared a vexatious litigant and is subject to a prefiling order (Code Civ. Proc., § 391.7, subd. (a)) obtain leave of the presiding judge or justice before filing an appeal from an adverse judgment?

Kabran v. Sharp Memorial Hospital, S227393. (D064133; 236 Cal.App.4th 1294; San Diego County Superior Court; 37-2010-00083678-CU-PO-CTL.) Petition for review after the Court of Appeal affirmed an order granting a new trial in a civil action. This case presents the following issue: Are the time constraints in California Code of Civil Procedure section 659a jurisdictional such that a court cannot consider late-filed documents?

Kilby v. CVS Pharmacy, Inc./Henderson v. JPMorgan Chase Bank NA, S215614. (9th Cir. Nos. 12-56130, 13-56095; 739 F.3d 1192, Southern District of California, 3:09-cv-02051-MMA-KSC; Central District of California, 2:11-cv-03428-PSG-PLA.)

Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in consolidated appeals pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: For purposes of IWC Wage Order 4-2001 § 14(A) and IWC Wage Order 7-2001 § 14(A), “(1) Does the phrase ‘nature of the work’ refer to an individual task or duty that an employee performs during the course of his or her workday, or should courts construe ‘nature of the work’ holistically and evaluate the entire range of an employee’s duties? (a) If the courts should construe ‘nature of the work’ holistically, should the courts consider the entire range of an employee’s duties if more than half of an employee’s time is spent performing tasks that reasonably allow the use of a seat? (2) When determining whether the nature of the work ‘reasonably permits’ the use of a seat, should courts consider any or all of the following: the employer’s business judgment as to whether the employee should stand, the physical layout of the workplace, or the physical characteristics of the employee? (3) If an employer has not provided any seat, does a plaintiff need to prove what would constitute ‘suitable seats’ to show the employer has violated Section 14(A)?”

Lafitte v. Robert Half Internat., Inc., S222996. (B249253; 231 Cal.App.4th 860; Los Angeles County Superior Court; BC321317. Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does *Serrano v. Priest* (1977) 20 Cal.3d 25 permit a trial court to anchor its calculation of a reasonable attorney’s fees award in a class action on a percentage of the common fund recovered?

Larkin v. Workers’ Comp. Appeals Bd., S216986. (C065891; 223 Cal.App.4th 538.) Petition for review after the Court of Appeal affirmed a decision of the Board. This case presents the following issue: Do the benefits provided under Labor Code section 4458.2 extend both to volunteer peace officers and to regularly sworn, salaried officers?

Lewis v. Superior Court, S219811. (B252032; 226 Cal.App.4th 933; Los Angeles County Superior Court; BS139289.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Do a physician’s patients have a protected privacy interest in the controlled substance prescription data collected and submitted to the California Department of Justice under Health and Safety Code section 11165? (2) If so, is disclosure of such data to the Medical Board of California justified by a compelling state interest?

Los Angeles County Bd. of Supervisors v. Superior Court, S226645. (B257230; 235 Cal.App.4th 1154; Los Angeles County Superior Court; BS145753.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Are invoices for legal services sent to the County of Los Angeles by outside counsel within the scope of the attorney-client privilege and exempt from disclosure under the California Public Records Act, even with all references to attorney opinions, advice and similar information redacted?

Lynch v. California Coastal Com., S221980. (D064120; 229 Cal.App.4th 658; San Diego County Superior Court; 37-2011-00058666-CU-WM-NC.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Did plaintiffs, who objected in writing and orally to certain conditions contained within a coastal development permit approved by defendant California Coastal Commission and who filed a petition for writ of mandate (Code Civ. Proc., § 1094.5) challenging those conditions, waive their right to challenge the conditions by subsequently executing and recording deed restrictions recognizing the existence of the conditions and constructing the project as approved? (2) Did the permit condition allowing plaintiffs to construct a seawall on their property, but requiring them to apply for a new permit in 20 years or to remove the seawall, violate Public Resources Code section 30235 or the federal Constitution? (3) Were plaintiffs required to obtain a permit to reconstruct the bottom portion of a bluff-to-beach staircase that had been destroyed by a series of winter storms, or was that portion of the project exempt from permitting requirements pursuant to Public Resources Code section 30610, subdivision (g)(1)?

McLean v. State of California, S221554. (C074515; 228 Cal.App.4th 1500; Sacramento County Superior Court; 34201200119161CUOEGDS.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) When bringing a putative class action to recover penalties against an “employer” under Labor Code section 203, may a former state employee sue the “State of California” instead of the specific agency for which the employee previously worked? (2) Do Labor Code section 202 and 203, which provide a right of action for an employee who “quits” his or her employment, authorize a suit by an employee who retires?

Mendoza v. Nordstrom, S224611. (9th Cir., No. 12-57130; 778 F.3d 834, Central District of California; 8:10-cv-00109-CJC-MLG.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: “(A) California Labor Code section 551 provides that ‘[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.’ Is the required day of rest calculated by the workweek, or is it calculated on a rolling basis for any consecutive seven-day period? (B) California Labor Code section 556 exempts employers from providing such a day of rest ‘when the total hours of employment do not exceed 30 hours in any week *or six hours in any one day thereof.*’ (Emphasis added.) Does that exemption apply when an employee works less than six hours in any one day of the applicable week, or does it apply only when an employee works less than six hours in each day of the week? (C) California Labor Code section 552 provides that an employer may not ‘cause his employees to work more than six days in seven.’ What does it mean for an employer to ‘cause’ an employee to work more than six days in seven: force, coerce, pressure, schedule, encourage, reward, permit, or something else?”

Monterey Peninsula Water Dist. v. Public Utilities Com., S208838. Original proceeding. This case presents the following issue: Does the Public Utilities Commission have the authority to review and regulate a user fee imposed by a local government entity that is collected through the bills of a regulated public utility?

Mountain Air Enterprises, LLC v. Sundowner Towers, LLC, S223536. (A138306; 231 Cal.App.4th 805; Marin County Superior Court; CIV081957.) Petition for review after the Court of Appeal reversed an order denying attorney fees in a civil action. This case includes the following issues: (1) Does the assertion of an agreement as an affirmative defense implicate the attorney fee provision in that agreement? (2) Does the term “action” or “proceeding” in Civil Code section 1717 and in attorney fee provisions encompass the assertion of an affirmative defense?

Nickerson v. Stonebridge Life Ins. Co., S213873. (B234271; 219 Cal.App.4th 188; Los Angeles County Superior Court; BC405280.) Petition for review after the Court of Appeal modified and affirmed the judgment in a civil action. The court limited review to the following issue: Is an award of attorney fees under *Brandt v. Superior Court* (1985) 37 Cal.3d 813 properly included as compensatory damages where the fees are awarded by the jury, but excluded from compensatory damages when they are awarded by the trial court after the jury has rendered its verdict?

926 North Ardmore Avenue v. County of Los Angeles, S222329. (B248536; 229 Cal.App.4th 1335; Los Angeles County Superior Court; BC476670.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does Revenue and Taxation Code section 11911 authorize a county to impose a documentary transfer tax based on a change in ownership or control of a legal entity that directly or indirectly holds title to real property?

Orange Citizens for Parks & Recreation v. Superior Court, S212800. (G047013, G047219; 217 Cal.App.4th 1005; Orange County Superior Court; 30-2011-00494437.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in an action for writ of administrative mandate. This case presents the following issue: Is the proposed development project of low density housing at issue in this case consistent with the city's general plan?

Parker v. State of California, S215265. (F062490; 221 Cal.App.4th 340; Fresno County Superior Court ; 10CECG02116.) Petition for review after the Court of Appeal granted a permanent injunction in a civil action. This case presents the following issue: Are the Penal Code sections that regulate "ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles" (Pen. Code, § 16650, subd. (a)) unconstitutional on their face for failure to afford adequate notice of the regulated conduct and/or failure to provide sufficient guidelines to prevent arbitrary enforcement?

People v. Miami National Enterprises, S216878. (B242644; 223 Cal.App.4th 21; Los Angeles County Superior Court; BC373536.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Is a payday loan company owned by a federally recognized Indian tribe entitled to tribal sovereign immunity, and thus exempt from state regulation, if the day-to-day management of the business is handled by a third party management company that is not affiliated with the tribe and pays the tribe a small percentage of the gross revenues?

People v. Safety National Casualty Ins. Co., S218712. (B243773; 225 Cal.App.4th 438, mod. 225 Cal.App.4th 1411a; Los Angeles County Superior Court; LA066432.) Petition for review after the Court of Appeal reversed an order denying a motion to vacate the forfeiture of a bail bond in a criminal case. This case presents the following issue: May Penal Code section 977, subdivision (b)(1), be utilized to determine whether a proceeding at which a defendant charged with a felony failed to appear was a proceeding at which the defendant was "lawfully required" to appear for purposes of forfeiting bail under Penal Code section 1305, subdivision (a)(4)?

Property Reserve v. Superior Court, S217738. (C067758, C067765, C068469; 224 Cal.App.4th 828; San Joaquin County Superior Court; 4594.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order granting a petition for precondemnation entry. The court limited review to the following issues: (1) Do the geological testing activities proposed by the Department of Water Resources constitute a taking? (2) Do the environmental testing activities set forth in the February 22, 2011, entry order constitute a taking? (3) If so, do the precondemnation entry statutes (Code Civ. Proc., §§ 1245.010-1245.060) provide a constitutionally valid eminent domain proceeding for the taking?

Quesada v. Herb Thyme Farms, Inc., S216305. (B239602; 222 Cal.App.4th 642; Los Angeles County Superior Court; BC436557.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Does the Organic Foods Production Act of 1990 (7 U.S.C. § 6501 et seq.) preempt state consumer lawsuits alleging that a food product was falsely labeled “100% Organic” when it contained ingredients that were not certified organic under the California Organic Products Act of 2003 (Food & Agr. Code, § 46000 et seq.; Health & Saf. Code, § 110810 et seq.)?

In re R.T., S226416. (B256411; 235 Cal.App.4th 795; Los Angeles County Superior Court; DK03719.) Petition for review after the Court of Appeal affirmed orders in a juvenile dependency proceeding. The court limited review to the following issue: Does Welfare and Institutions Code section 300, subdivision (b)(1), authorize dependency jurisdiction without a finding that parental fault or neglect is responsible for the failure or inability to supervise or protect the child?

Raceway Ford Cases, S222211. (E054517, E056595; 229 Cal.App.4th 1119; Riverside County Superior Court; JCCP4476.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) Does the inclusion of inapplicable smog check and smog certification fees in an automobile purchase contract violate the Automobile Sales Finance Act (Civ. Code, § 2981 et seq.)? (2) Does backdating a second or subsequent finance agreement to the date of the first finance agreement for purchase of a vehicle violate the Act?

Ramos v. Brenntag Specialties, Inc., S218176. (B248038; 224 Cal.App.4th 1239; Los Angeles County Superior Court; BC449958.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Are negligence and strict liability claims by an employee of a processing company against a supplier of raw materials for injuries allegedly suffered in the course of processing those materials barred by the component parts doctrine?

Roy Allen Slurry Seal, Inc. v. American Asphalt South, Inc., S225398. (B255558; 234 Cal.App.4th 748; Riverside County Superior Court; RIC1308832.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) In the context of competitive bidding on a public works contract, may the second lowest bidder state a claim for intentional interference with prospective economic advantage against the winning bidder based on an allegation that the winning bidder did not fully comply with California's prevailing wage law after the contract was awarded? (2) To state a cause of action for intentional interference with prospective economic advantage, must the plaintiff allege that it had a *preexisting* economic relationship with a third party with probable future benefit that preceded or existed separately from defendant's interference, or is it sufficient for the plaintiff to allege that its economic expectancy arose at the time the public agency awarded the contract to the low bidder?

Sandquist v. Lebo Automotive, Inc., S220812. (B244412; 228 Cal.App.4th 65; Los Angeles County Superior Court; BC476523.) Petition for review after the Court of Appeal reversed an order in a civil action. This case presents the following issue: Does the trial court or the arbitrator decide whether an arbitration agreement provides for class arbitration if the agreement itself is silent on the issue?

Shaw v. Superior Court, S221530. (B254958; 229 Cal.App.4th 12; Los Angeles County Superior Court; BC493928.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Did the Court of Appeal err by reviewing plaintiff's right to a jury by writ of mandate rather than appeal? (See *Nessbit v. Superior Court* (1931) 214 Cal. 1.) (2) Is there a right to jury trial on a retaliation cause of action under Health and Safety Code section 1278.5?

Sierra Club v. County of Fresno, S219783. (F066798; 226 Cal.App.4th 704; Fresno County Superior Court; 11CECG00706, 11CECG00709, 11CECG00726.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents issues concerning the standard and scope of judicial review under the California Environmental Quality Act. (CEQA; Pub. Resources Code, § 21000 et seq.)

Solus Industrial Innovations, LLC v. Superior Court, S222314. (G047661; 229 Cal.App.4th 1291; Orange County Superior Court; 30-2012-00581868.) Petition for review after the Court of Appeal granted a petition for writ of peremptory mandate. This case presents the following issue: Does federal law preempt a district attorney's attempt to recover civil penalties under California's unfair competition law based on an employer's violation of workplace safety standards that resulted in the deaths of two employees?

In re Transient Occupancy Tax Cases, S218400. (B243800; 225 Cal.App.4th 56; Los Angeles County Superior Court; JCCP 4472.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case includes the following issue: When a customer books a hotel room through an online travel company, should the occupancy tax levied on the rent charged by the hotel be calculated based on the retail rate paid by the customer to obtain the right to use the room or on the wholesale amount that the hotel receives from the online travel company after that company has deducted its markup and fees?

Tri-Fanucchi Farms v. Agricultural Labor Relations Bd., S227270. (F069419; 236 Cal.App.4th 1079.) Petitions for review after the Court of Appeal affirmed in part and reversed in part a decision of the Agricultural Labor Relations Board. This case presents the following issues: (1) May an employer assert as a defense to a request for collective bargaining under the Agricultural Labor Relations Act (Lab. Code, § 1140, et seq.) that the certified union has “abandoned” the bargaining unit? (2) Did the Board err in granting “make whole” relief (Lab. Code, § 1160.3) as a remedy for the employer’s refusal to bargain with the union?

Webb v. Special Electric Co., Inc., S209927. (B233189; 214 Cal.App.4th 595, mod. 214 Cal.App.4th 1386d; Los Angeles County Superior Court; BC436063.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Should a defendant that supplied raw asbestos to a manufacturer of products be found liable to the plaintiffs on a failure to warn theory? (2) Was the trial court’s decision to treat defendant’s pre-trial motions for nonsuit and for a directed verdict as a post-trial motion for judgment notwithstanding the verdict procedurally improper, and if so, was it sufficiently prejudicial to warrant reversal?

Wheatherford v. City of San Rafael, S219567. (A138949; 226 Cal.App.4th 460; Marin County Superior Court; CIV1300112.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Must a plaintiff have paid or be liable to pay a property tax to a government entity in order to bring a taxpayer waste action against that entity under Code of Civil Procedure section 526a, or can the payment of other taxes confer standing?

Williams v. Superior Court, S227228. (B259967; 236 Cal.App.4th 1151; Los Angeles County Superior Court; BC503806.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issues: (1) Is the plaintiff in a representative action under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.) entitled to discovery of the names and contact information of other “aggrieved employees” at the beginning of the proceeding or is the plaintiff first required to show good cause in order to have access to such information? (2) In ruling on such a request for employee contact information, should the trial court first determine whether the employees have a protectable privacy interest and, if so, balance that privacy interest against competing or countervailing interests, or is a protectable privacy interest assumed? (See *Hill v. National Collegiate Athletic Association* (1994) 7 Cal.4th 1; *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360.)

Williams & Fickett v. County of Fresno, S224476. (F068652; 232 Cal.App.4th 1250; Fresno County Superior Court; 13CECG00461.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) Must a taxpayer against whom an escape assessment on personal property has been made exhaust administrative remedies by filing an application with the county’s board of equalization to reduce the assessment if the taxpayer claims that it does not own and has no interest in the assessed property, or does the taxpayer fall within the “nullity” exception to the exhaustion requirement? (2) Is a taxpayer who files an application for changed assessment with the county’s board of equalization subject to a one-year limitations period for paying the assessment and filing an action challenging the assessment, or does the period within which the taxpayer may file such an action begin to run only after the taxpayer has paid the disputed taxes?

Winn v. Pioneer Medical Group, Inc., S211793. (B237712; 216 Cal.App.4th 875; Los Angeles County Superior Court; BC455808.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does “neglect” within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15657) include a health care provider’s failure to refer an elder patient to a specialist if the care took place on an outpatient basis, or must an action for neglect under the Act allege that the defendant health care provider had a custodial relationship with the elder patient?

Yvanova v. New Century Mortgage Corp., S218973. (B247188; 226 Cal.App.4th 495; Los Angeles County Superior Court; LC097218.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void?